defects in light, ventilation and drainage. They certainly took objection to the jurisdiction of the Board but they never objected to the form of the statement of grounds, or argued that they were kept in the dark as to what the real grounds of objection were, and in para 7 of his affidavit Mr. Bartley states that if such objection had been made, the Board would have considered it, and if satisfied that such statement was insufficient, would have furnished a further and more detailed statement. I am inclined to think therefore that if the applicants could have waived their objection to the form of the statement supplied to them under section 58 (5) they did so waive it. In my opinion, however, the insufficiency of the statement went to the root of the Board's jurisdiction. The jurisdiction of the Board is entirely a statutory jurisdiction and unless and until the provisions of the statute have been complied with, their jurisdiction to consider objections and submit a declaration to the Governor in Council does not arise. As Romer, L.J. said in *Mc Intosh* vs. *Simpkins*, 1901, 1 K.B. p. 487 in a passage quoted with approval by Stirling, L.J. in *Alderson* vs. *Palliser*, 1901. 2 K.B. at p. 838 "The condition on which the Judge could exercise the power given by the rule was wanting."

As regards the argument based in para 4 of Mr. Bartley's affidavit, it is not clear to me that it means anything more than that the members of the Board were not satisfied with merely reading the Municipal Health Officer's report but assured themselves by a personal inspection that the statements were correct. If, however, the para is not susceptible of this explanation and in fact the Board considered other matters not mentioned in the report, then in my opinion this was not a defect appearing on the face of the proceedings which went to the Board's jurisdiction. It was a defect of procedure capable of being waived, and in my opinion in view of the course taken by the applicants at the inquiry it was so waived. But this does not affect the applicants' main argument that the form of the statement itself was not in accordance with the requirements of the Ordinance, and in my opinion the insufficiency of the statement showed a want of jurisdiction appearing on the face of the proceedings which could not be cured by waiver. The applicants therefore would have been entitled to succeed on this point if the remedy of prohibition had been available for them.

I need only add that the real complaint of the owners would appear to be that the Board proceeded under Part V of the Ordinance "Insanitary Buildings" instead of Part VI "Improvement schemes." Under Part VI the owners would have been entitled to full compensation even though their houses not only fell short of modern requirements but were individually insanitary. The Board however are a public body owing a duty to the public and the taxpayer, and if by law they are invested with the power of adopting alternative remedies for effecting slum clearance, it is clearly not only their right but their duty to adopt the cheaper method. This point is dealt with in the Judgment of Channell J. in *Hall* vs. *The Manchester Corporation*, 111 L.T. at page 188 in a passage which is quoted with approval by the learned Chief Justice at pages 155 & 156 of the record. It is entirely for the legislature to say whether the Board should be invested with such plenary powers or not, and it is no concern of the Court that, under Part VI the owners might possibly be compensated too generously whereas under Part V their houses are to all intents and purposes confiscated.

For the reasons stated above I would allow this appeal with costs here and below and with a certificate for two counsel at each hearing.

Appeal allowed.

Solicitors for the Appellants—
Braddell Brothers.

Solicitors for the Respondents—
Sisson & Delay.

[APPELLATE CRIMINAL JURISDICTION]
BURTON, Ag. C.J.
July 29, 1935.

REX vs. KAPPAYA

[SINGAPORE CRIMINAL APPEAL No. 10 of 1935]

Ordinance 132 (Public Authorities Protection) Section 2 subsection (a).

The word "action" in Section 2 subsection 2 (a) Ordinance 132 (Public Authorities Protection) does not include a criminal prosecution and accordingly it is not necessary to give one previous month's notice in writing of an intended criminal prosecution in a case falling within that Ordinance.

Magistrate's Appeal.

Appeal against an acquittal on a question of law.

Adrian Clark, D.P.P. for the Crown (Appellant).

Withers Payne for the Respondent, the Singapore Municipal Dog Shooter.

The facts and arguments sufficiently appear from the Judgment.

Cur. Ad. Vult.

BURTON, AG. C.J.—Kappaya, a Municipal dogshooter, was charged with negligently endangering the personal safety of others and acquitted by the Fourth Magistrate on the

ground that one month's previous notice had not been given in accordance with section 2 (2) (a) of Ordinance 132 (Public Authorities Protection). The Crown appeals.

The determination of the appeal depends on the interpretation of section 2 (2) which is as follows:—

The action prosecution or proceeding shall not lie or be instituted unless:

(a) one month's previous notice in writing of the intended action and of the cause thereof, is given to the defendant;

(b) it is commenced within three months next after the act neglect or default complained of, or in case of a continuance of injury or damage, within three months next after the ceasing thereof.

Before this Ordinance was passed in 1912 this protection of public servants was repeated in each of the Ordinances dealing with the subject matter in respect of which protection was desired. The Police Force Ordinance No. 1 of 1872 contained such provisions in section 42 which may be taken as typical; and I think the meaning of these sections is quite clearly the meaning from which the Crown contends in this appeal.

But Dr. Withers-Payne argues that by transposing what is now clause (a) so that it now occupies a position intermediate between the introductory words of section 2 and clause (b) instead of following clause (b) as in the 1872 Ordinance the legislature intended a change of meaning. The two clauses (a) and (b) he argues can be read either conjunctively or disjunctively, as if by supplying "and" or "or" in between; but whether one or the other, the meaning ought, he says, to be complete if we omit either one of the clauses (a) and (b). There is no difficulty if (a) is omitted, the sense is complete. But if (b) is omitted the words "prosecution and proceeding" are left in the air unless the word "action" be deemed to have been used in its juridical meaning and to include any putting into force of a legal right.

I cannot see a flaw to the strict logic of this argument; but unfortunately if this reading is adopted it involves us in what is I think an equal or greater difficulty, the difficulty that the draughtsman has used the word "action" consistently throughout the Ordinance to mean a civil action except in this one clause where for a purpose which is not apparent, he suddenly turns away from the common and established usage of the word and to our confusion adopts the juridical interpretation.

There are two reasons I think why I should prefer the interpretation for which the Crown contends: firstly the plain meaning of action is civil action (see Buckley, L.J. in *Roberts* v. *The Metropolitan Borough of Battersea* at p. 568 and numerous other authorities) and we must, unless compelled to the contrary, give the word action the same meaning throughout the Ordinance; and secondly because this Ordinance gives a privilege to Public Servants which the rest of the community does not enjoy, and therefore where two constructions are possible, the construction which would enlarge this privilege must be rejected.

I conclude therefore that the Magistrate was wrong in holding that the word "action" in section 2(2) (a) includes criminal prosecution, and I therefore allow the appeal set aside his order and direct him to continue the trial.

Appeal allowed.

Solicitors for Respondent: *Drew & Napier.*

END OF THE STRAITS SETTLEMENTS OFFICIAL REPORTS.